IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) No.699 of 2015

Commissioner of Income Tax
Central IV, 108, Nungambakkam
High Road, Chennai 600 034. ...Appellant

-vs-

M/s.SAS Hotels & Enterprises Ltd.,
No.3, Mangesh Street, T.Nagar
Chennai 600 017. ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai dated 01.03.2012 passed in ITA No.2080/Mds/2011, against the order passed by the Commissioner of Income Tax (Appeals) -V, Chennai, dated 28.09.2011 made in Appeal No.CIT (A) - VI, IT No.191/2007-2008, against the order passed by the Assistant Commissioner of Income Tax, Company Circle VI (1), Chennai, dated 05.12.2007 for the assessment year 2005 - 2006.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax Department

JUDGMENT
(The Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is by the Revenue, raising the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of CIT (A), who directed the Assessing Officer to ignore all depreciation loss from windmill business prior to assessment year 200-01?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding the unabsorbed depreciation loss prior to initial assessment year could be notionally carried forward while computing deduction under Section 80IA?"

2. Heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the Department.

3. Following the decision of the Supreme Court in Liberty India vs. CIT [2009] 317 ITR 218 and the decision in CIT vs Mewar Oil and General Mills Limited [2004] 271 ITR 311, a Bench of this Court has already held in Velayudhasamy Spinning Mills P.Ltd. vs Assistant Commisisoner of Income Tax [2012] 340 ITR 477 (Mad) that once the losses and other deductions have been set off against the income of the previous year, it should not be re-opened again for the purpose of computation of current year income under Section 80I or 80IA of the Act. Though the decision of this Court in Velayudhasamy Spinning Mills has been taken by the Revenue to the Supreme Court and the Supreme Court has issued notice in the Special Leave Petition, we followed the decision in Velayudhasamy Spinning Mills in CIT vs. R.Yuvaraj reported in [2015] 57 Taxmann.Com 252 (Madras). The effect of the Supreme Court ordering notice in the Special Leave Petition does not tantamount the wiping out the law laid down by this Court, which merely followed the earlier decision of the Supreme Court in Liberty India. Therefore, the questions of law raised are answered against the Revenue and in favour of the assessee.

4. In the result, this Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Income Tax
   Company Circle VI(1), Chennai-34.

2. The Commissioner of Income Tax (Appeals-V)
   Chennai.

3. The Income Tax Appellate Tribunal,
   Chennai Bench 'A'.

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GP (CO)
PSI (30.09.2015)